IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,	**§**	
Plaintiff,	**§**	
	§	
V.	**§**	**4:03CR00061-001**
	§	
ROCKY DEVURLE SHAW,	**§**	
Defendant.	**§**	

MOTION FOR ENTRY OF FINAL ORDER AS TO WRIT OF EXECUTION[1]

The Plaintiff, the United States of America, by counsel, John M. Bales, United States Attorney for the Eastern District of Texas, and Robert A. Wells, Assistant United States Attorney, respectfully moves the Court to enter a Final Order as to Writ of Execution in this matter pursuant to 28 U.S.C. §§ 3203(d)(1) and 3102(d)(1) and would show the Court as follows:

1. On June 30, 2004, the Court entered a criminal judgment in case no. 4:03CR00061-001 against Judgment-Defendant, Rocky Devurle Shaw, in which he was ordered to pay restitution in the amount of $351,102.17 and a fine in the amount of $20,000.00. The judgment remains unsatisfied to the extent of the present balance in the amount of $351,439.76 as of March 16, 2015.

2. On September 5, 2014, the United States filed its Motion for a Writ of

[1] The United States respectfully requests the Court rule on the Requests for Hearing filed on October 20, 2014 and the United States' Response to Debtor's Request for Hearing filed on October 31, 2014 before ruling on this motion. *See* Doc. Nos. 88, 89 and 99.

Execution requesting the Court to issue a Writ of Execution for the purpose of levying on and selling three vehicles in which the Judgment-Defendant has a substantial nonexempt interest. *See* Doc. No. 65.

3. The Writ of Execution was issued on September 8, 2014. *See* Doc. No. 72.

4. On October 3, 2014, the United States Marshal Service levied on the following described property:

a. Motor Vehicle – 2001 Mercedes ML 320, VIN: 4JGAB54EX1A282592

b. Motor Vehicle – 2005 BMWT X5, VIN: 5UXFA13575LY21587

c. Motor Vehicle – 2005 BMW 5CI, VIN: WBABD33455PL06250

See Doc. Nos. 75, 77, 78, 79 and 104.

5. On October 3, 2014, the Judgment-Defendant, his spouse Phyllis Shaw and his son Reed Dayne Shaw were personally served by the United States Marshal Service with the following documents: (a) Application for Writ of Execution; (b) Order for Writ of Execution; (c) Writ of Execution; and, (d) Clerk's Notice of Post-Judgment Execution (request for Hearing & Claim for Exemptions forms attached). *See* Doc. No. 80, 81 and 82. On October 17, 2014, an interested party, Nena D. Harrison, was also served with these same documents. A copy of the USM-285 Process Receipt and Return form is attached hereto as Exhibit A. In these documents, the Judgment-Defendant, his spouse, his son and Nena D. Harrison were notified of available exemptions and the right to

object and to request a hearing within twenty (20) days after service pursuant to 28 U.S.C. § 3202(d).

6. On October 20, 2014, Judgment-Defendant filed two Requests for Hearing stating he neither owns the property nor does he nor has he ever own any percentage of the property. *See* Doc. Nos. 88 and 89. None of the other served parties filed any objections or requests for hearing.

7. On October 31, 2014, the United States' filed its Response to the Requests for Hearing objecting to the requests for hearing because no exemptions were cited and there were no valid grounds to challenge the execution. In its' response, the United States proved probable cause that the vehicles are Shaw's property and are therefore subject to execution.

8. "Levy on property pursuant to a writ of execution issued under this section shall be made in the same manner as levy on property is made pursuant to a writ of attachment issued under section 3102(d)." *See* 28 U.S.C. § 3203(d). "The marshal may not sell property unless ordered by the court." *See* 28 U.S.C. § 3102(d). Personal property may be sold after the expiration of the 30-day period beginning on the date of levy under subsection (d). *See* 28 U.S.C. § 3203(g)(1)(B)(ii)(I). More than 30 days has passed since the date of levy. However, "…[i]f a hearing is requested pursuant to subsection (d), property with respect to which the request relates shall not be sold before such hearing. *See* 28 U.S.C. § 3202(e).

WHEREFORE, the United States requests the Court to (1) rule on the requests for hearing and the United States' objection to the requests for hearing; and, (2) issue a Final Order directing the United States Marshal to sell the vehicles without delay and pay the net proceeds payable to the United States District Court, EDTX, and mail it to the U.S. District Court, Fine and Restitution Section, 1910 E SE Loop 323, No. 287, Tyler, Texas 75701 for distribution to the victims. The United States requests that all payments bear the Judgment-Defendant's name, Rocky Devurle Shaw, and Court Number 4:03CR00061-001.

Respectfully submitted,

JOHN M. BALES
UNITED STATES ATTORNEY

/s/ Robert A. Wells /s/

Robert A. Wells
Assistant U.S. Attorney
State Bar No. 24033327
110 N. College, Suite 700
Tyler, Texas 75702
Tel: (903) 590-1400
Fax: (903) 590-1437
Email: robert.wells3@usdoj.gov

CERTIFICATE OF SERVICE

I certify that on the 8th day of April, 2015, a copy of the foregoing Motion for Entry of Final Order as to Writ of Execution was mailed via the United States Postal Service, First Class Mail, to the Judgment-Defendant and other interested parties as follows:

Rocky Devurle Shaw
[redacted]
Dallas, Texas [redacted]
JUDGMENT-DEFENDANT

Phyllis Shaw
[redacted]
Dallas, Texas [redacted]
JUDGMENT-DEFENDANT'S SPOUSE

Reed Dayne Shaw
d/b/a Quest Environmental
[redacted]
Dallas, Texas [redacted]
JUDGMENT-DEFENDANT'S SON

Nena Harrison
[redacted].
Dallas, Texas [redacted]

/s/ Robert A. Wells /s/
ROBERT A. WELLS
Assistant U.S. Attorney